

## REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application. Applicant's Attorney, Paul Mitchell, briefly discussed the rejection of the pending claims with Examiner Wood on 11/16/06.

### 35 U.S.C. § 103

Claims 1, 3-8, 10-11, 14-16, 19-23, 27-30, and 33-38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,986,033 to Miyamoto et al. (hereinafter "Miyamoto") in view of U.S. Patent Application Publication No. 2002/0198972 to Babbitt et al. (hereinafter "Babbitt").

Claims 9, 13, and 26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,986,033 to Miyamoto et al. (hereinafter "Miyamoto") in view of U.S. Patent Application Publication No. 2002/0198972 to Babbitt et al. (hereinafter "Babbitt") and further in view of U.S. Patent No. 6,687,902 to Curtis et al. (hereinafter "Curtis").

Claims 12 and 24-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,986,033 to Miyamoto et al. (hereinafter "Miyamoto") in view of U.S. Patent Application Publication No. 2002/0198972 to Babbitt et al. (hereinafter "Babbitt") and further in view of U.S. Patent No. 6,236,983 to Hofmann et al. (hereinafter "Hofmann").

Claims 17 and 31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,986,033 to Miyamoto et al. (hereinafter "Miyamoto") in view of U.S. Patent Application Publication No. 2002/0198972 to

Babbitt et al. (hereinafter "Babbitt") and further in view of U.S. Patent No. 6,763,456 to Agnihotri et al. (hereinafter "Agnihotri").

Claims 39 and 40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,986,033 to Miyamoto et al. (hereinafter "Miyamoto") in view of U.S. Patent Application Publication No. 2002/0198972 to Babbitt et al. (hereinafter "Babbitt") and further in view of U.S. Patent Application Publication No. 2002/0161868 to Paul et al. (hereinafter "Paul").

**Claim 1** relates to an apparatus configured to manage installation of operating systems on a plurality of computing devices, wherein the installation is performed across the plurality of computing devices both concurrently and asynchronously, wherein the installation comprises transferring multiple portions of data to each of the plurality of computing devices, and wherein some of the multiple portions are transferred to the plurality of computing devices concurrently and other of the multiple portions are transferred to the plurality of computing devices asynchronously, and wherein the portions that are transferred to the plurality of computing devices asynchronously include one or more programs to be executed on the plurality of computing devices to configure the plurality of computing devices.

Applicant respectfully submits that the Office has failed to make out a prima facie case for a §103 rejection at least due to insufficient motivation for the proposed combination. In making out the rejection of claim 1, the Office first looks to Miyamoto to describe the recited features. The Office states that Miyamoto describes "the multiple portions are transferred to the plurality of

computing devices asynchronously". The Office then states that "Miyamoto did not explicitly state transferring multiple portions of the plurality of computing devices concurrently." Finding Miyamoto deficient in describing this claim feature, the Office then looks to Babbitt. The Office looks to paragraph 5 of Babbitt to describe the recited "transferring...concurrently" feature of claim 1.

In relation to motivation for the proposed combination of Miyamoto and Babbitt, the Office states that it would have been obvious "to implement the installation system of Miyamoto with the simultaneous/concurrent data transmission for downloading installable software/data/OS as found in Babbitt's teachings". In support of the proposed combination, the Office states that "it would have been obvious because one...would be motivated to transmit data quickly to many destinations and thus speed the operating of a system (page 1, paragraphs 0005 and 0008, "simultaneous")." Applicant respectfully submits that the Office is misapplying Babbitt's teachings. Babbitt describes, at paragraph [0005], that "using multicasting, *instead* of a file server process transmitting boot information to one client at a time, the boot information may be transmitted to multiple clients simultaneously." Describing one system as advantageous over another system is not motivation to combine the two systems. Rather, Babbitt expressly describes the use of its system *instead* of Miyamoto's system. Applicant respectfully submits that as opposed to offering support for the Office's proposed combination, Babbitt teaches directly away from such a combination in teaching the use of its faster system *instead* of an asynchronous system. Accordingly, Applicant respectfully requests that the §103 rejection based upon the art of record be withdrawn and that claim 1 be allowed.

**Claim 3** depends from claim 1 and recites, wherein the portions that are transferred to the plurality of computing devices concurrently are larger than the portions transferred to the plurality of computing devices asynchronously. In making out the rejection of claim 3 the Office contends that Miyamoto describes this claim feature. However, Applicant respectfully notes that the Office admits that Miyamoto does not describe transferring multiple portions of the plurality of computing devices concurrently. Since Miyamoto does not describe both transferring portions asynchronously and transferring portions concurrently, it is logically impossible that Miyamoto describes a relationship therebetween where portions transferred concurrently are larger than portions transferred asynchronously. Accordingly, Applicant respectfully requests that the §103 rejection based upon the art of record be withdrawn and that claim 3 be allowed.

**Claims 4-8** depend from claim 1 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 1, are neither disclosed nor suggested in the references cited and applied by the Office.

**Claim 9** depends from claim 1. Accordingly, claim 9 includes all of the recited features of claim 1. The proposed combination of Miyamoto and Babbitt fail to teach the features of claim 9. The addition of Curtis does not correct the deficiencies of Miyamoto and Babbitt. Accordingly, claim 9 is allowable over the art of record.

**Claims 10-11** depend directly and indirectly, respectively, from claim 1 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those

recited in claim 1, are neither disclosed nor suggested in the references cited and applied by the Office.

**Claim 12** depends from claim 10 which depends from claim 1. Accordingly, claim 12 includes all of the recited features of claims 1 and 10. The proposed combination of Miyamoto and Babbitt fail to teach the features of claim 12. The addition of Hofmann does not correct the deficiencies of Miyamoto and Babbitt. Accordingly, claim 12 is allowable over the art of record.

**Claim 13** depends from claim 10 which depends from claim 1. Accordingly, claim 13 includes all of the recited features of claims 1 and 10. The proposed combination of Miyamoto and Babbitt fail to teach the features of claim 13. The addition of Curtis does not correct the deficiencies of Miyamoto and Babbitt. Accordingly, claim 13 is allowable over the art of record.

**Claim 14** relates to computer readable media having stored thereon a plurality of instructions that, when executed by one or more processors, causes the one or more processors to:

- receive, from each of a plurality of computing devices, an indication that the computing device is to have an operating system installed on the computing device;
- for each of the plurality of computing devices, identify, in response to receiving the indication, a set of steps to be taken in order to install an operating system on the computing device; and
- control installation of the operating systems on the plurality of computing devices asynchronously and in parallel, wherein the installation comprises transferring multiple portions of data to each

of the plurality of computing devices, and wherein some of the multiple portions are transferred to the plurality of computing devices in parallel and other of the multiple portions are transferred to the plurality of computing devices asynchronously, and wherein the portions that are transferred to the plurality of computing devices asynchronously include one or more programs to be executed on the plurality of computing devices to configure the plurality of computing devices.

Claim 14 is rejected over Miyamoto and Babbitt based upon the rationale described above in relation to claim 1. Applicant respectfully submits that the Office has failed to establish a prima facie §103 rejection due at least to insufficient motivation for the proposed combination of Miyamoto and Babbitt. Specifically, Miyamoto describes an asynchronous system and Babbitt describes a simultaneous system. Babbitt expressly describes the use of its simultaneous system *instead* of asynchronous systems. Therefore, the references teach away from the proposed combination rather than suggesting the proposed combination. Accordingly, Applicant respectfully requests that the §103 rejection based upon the art of record be withdrawn and that claim 14 be allowed.

**Claims 15-16** depend from claim 14 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 1, are neither disclosed nor suggested in the references cited and applied by the Office.

**Claim 17** depends from claim 14. Accordingly, claim 17 includes all of the recited features of claim 14. The proposed combination of Miyamoto and Babbitt

fail to teach the features of claim 17. The addition of Agnihotri does not correct the deficiencies of Miyamoto and Babbitt. Accordingly, claim 17 is allowable over the art of record.

**Claim 19** is allowable for reasons similar to those described above in relation to claim 3.

**Claims 20-23** depend from claim 14 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 14, are neither disclosed nor suggested in the references cited and applied by the Office.

**Claims 24-25** are allowable for reasons similar to those described above in relation to claim 12.

**Claim 26** is allowable for reasons similar to those described above in relation to claim 9.

**Claim 27** is directed to a method and recites:

- identifying, for each of a plurality of devices, a process to be followed to install an operating system on the device; and
- controlling, in parallel and asynchronously, installation of the operating systems on the plurality of devices, wherein the installation comprises transferring multiple portions of data to each of the plurality of devices, and wherein some of the multiple portions are transferred to the plurality of devices in parallel and other of the multiple portions are transferred to the plurality of devices asynchronously, and wherein the portions that are transferred to the plurality of computing devices asynchronously



- means for performing a first portion of an installation process on each of the plurality of computing devices asynchronously across the plurality of computing devices, wherein the means for performing the first portion comprises means for downloading one or more programs to each of the plurality of computing devices to be executed on the plurality of computing devices to configure the plurality of computing devices; and
- means for performing a second portion of the installation process on each of the plurality of computing devices concurrently.

Claim 37 is rejected over Miyamoto and Babbitt based upon the rationale described above in relation to claim 1. Applicant respectfully submits that the Office has failed to establish a *prima facie* §103 rejection due at least to insufficient motivation for the proposed combination of Miyamoto and Babbitt. Specifically, Miyamoto describes an asynchronous system and Babbitt describes a simultaneous system. Babbitt expressly describes the use of its simultaneous system *instead* of asynchronous systems. Therefore, the references teach away from the proposed combination rather than suggesting the proposed combination. Accordingly, Applicant respectfully requests that the §103 rejection based upon the art of record be withdrawn and that claim 37 be allowed.

**Claim 38** depends from claim 37 and is allowable as depending from an allowable base claim. This claim is also allowable for its own recited features which, in combination with those recited in claim 37, are neither disclosed nor suggested in the references cited and applied by the Office.

Claims 39 and 40 depend from claim 1. Accordingly, these claims include all of the recited features of claim 1. The proposed combination of Miyamoto and Babbitt fail to teach the features of claims 39 and 40. The addition of Paul does not correct the deficiencies of Miyamoto and Babbitt. Accordingly, claims 39 and 40 are allowable over the art of record.

### Conclusion

Claims 1, 3-17, 19-31, and 33-40 are in condition for allowance. Applicant respectfully requests reconsideration and issuance of the subject application. Should any matter in this case remain unresolved, the undersigned attorney respectfully requests a telephone conference with the Examiner to resolve any such outstanding matter.

Date:

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Respectfully Submitted,

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